

September 29, 2022

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Re: In the Matter of: Operable Units Two and Four of the Diamond Alkali
Superfund Site; In and About Essex County, New Jersey

Dear Counsel:

This letter is to follow up my September 23, 2022 letter.

OxyChem deposed a corporate representative of The Sherwin-Williams Company ("Sherwin-Williams") on Tuesday, September 27, 2022. For your convenience, the transcript is attached.

The deposition confirmed:

- Sherwin-Williams withheld information and documents that were required to be included in its response to the United States Environmental Protection Agency's (EPA) 1995 Request for Information under §104(e) of CERCLA;
- Sherwin-Williams's Response to EPA's Request was incomplete;
- Sherwin-Williams's Response was materially wrong; and
- Sherwin-Williams failed to amend or supplement its March 3, 1995 response to cure its deficiencies and inaccuracies, despite understanding its obligation to do so and possessing or having access to the required information for decades.

We also learned the following facts, among others:

- Sherwin-Williams' Response to EPA's 1995 Request for Information was not accurate with respect to the presence and use of DDT at the Newark plant. (28:19-29:8; 102:25-104:3). Sherwin-Williams admitted its Newark plant mixed DDT with other ingredients to formulate pesticide products, as well as received shipments of DDT-containing pesticides from other Sherwin-Williams plants. (76:22-77:10; 124:17-125: 14).

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- Sherwin-Williams acknowledged that a company record—disclosed for the first time on September 21, 2022—reported that the Newark plant’s “factory output” between September 1947 and August 1948 included more than 200,000 pounds or gallons of Pestroy, a pesticide that contained DDT as an active ingredient. (49:21-50:12). Other records show that Sherwin-Williams maintained an inventory of DDT at the Newark plant for that purpose and stored the DDT-containing pesticide products on-site. (33:1-8; 39:2-9).
- Sherwin-Williams also acknowledged the inaccuracy of its representations to NJDEP in the site remediation process and to OxyChem in its CERCLA lawsuit, where Sherwin-Williams represented that *DDT was never utilized at the Newark plant*. (123:23-125:14).
- Sherwin-Williams admitted its company records reflect that, during 1959 through 1963, its Newark plant consumed thousands of pounds of the PCB mixture Aroclor-1254. (142:13-21; 160:18-161:8; 162:2-15).
- Sherwin-Williams also acknowledged the detection of PCBs in soil at the former Newark plant property, including a detection of Aroclor-1254 at a concentration of *140,000 ppb*. (164:7-21).
- Sherwin-Williams acknowledged its 1995 submission to EPA did not identify the use or presence at the Newark plant of any PCBs or Aroclor. (132:6-13)
- Sherwin-Williams admitted its company records reflect the Newark plant’s extensive consumption of lead-containing raw materials starting in the earliest days of plant operations and continuing for decades. For example, nearly *1.2 million* pounds of leaded zinc were consumed at the Newark plant during 1959 and 1960. (184:25-185:8). Sherwin-Williams records also reference the Newark plant’s manufacture of the pesticide lead arsenate—itself a CERCLA hazardous substance that was not disclosed as required by EPA’s 1995 104(e) request. (174:1-10; 177:2-23; 188:7-19).
- Sherwin-Williams acknowledged that its 1995 submission to EPA failed to disclose *any* hazardous substance-containing product or byproduct during the 100-year operation of its Newark plant. (130:1-132:13; 207:22-208:6).
- Sherwin-Williams acknowledged its continuing obligation to promptly notify EPA of additional information or any response that was false, misleading, or misrepresented the truth. (17:13-18:9). Despite that obligation, Sherwin-Williams could not identify any written or oral communication supplementing its inaccurate response to EPA. (121:8-23).

OxyChem can make available to DOJ and/or EPA Sherwin-Williams’s recent document

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production, 33,000+ pages, except those few documents upon which Sherwin-Williams has retained a "Confidential" designation. Please let us know if you would like copies.

Sincerely,
Langsam Stevens Silver & Hollaender LLP



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